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05 October 2018

Version of attached file:

Published Version

Peer-review status of attached file:

Peer-reviewed

Citation for published item:

Dahl Sørensen, Anders (2018) 'Hippodamus of Miletus and the character of the Athenian Dikastic Oath (Arist. Pol. 2.8).', *Greek, Roman, and Byzantine studies.*, 58 (3). pp. 324-348.

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Hippodamus of Miletus and the Character of the Athenian Dikastic Oath (Arist. *Pol.* 2.8)

Anders Dahl Sørensen

1. *The debate over the Athenian dikastic oath*

Each year, those 6000 citizens of classical Athens who had been selected by lot to serve as citizen-judges ('dikasts') in the popular law courts swore an oath on the hill of Ardettos outside the city-walls, solemnly stating their commitment to a set of fundamental principles that should guide their judicial decisions.¹ The importance of this 'dikastic oath' for understanding the character of the Athenian legal system is not difficult to see. Given the crucial role of oaths in regulating human conduct in ancient societies, what the dikastic oath required the dikasts to do is likely to have shaped, not only the self-understanding, but also the judicial practice of the Athenian law courts. It is therefore all the more unfortunate that the oath is not found in its entirety in any surviving ancient source.² Max Fränkel's classic reconstruction is elegant and has been widely accepted by scholars, but it is at bottom an intricate pastiche made up of bits and pieces drawn from a large number of citations of, and allusions to, the oath in Athenian law court speeches and in later

¹ M. H. Hansen, *Athenian Democracy in the Age of Demosthenes* (Oxford/ Cambridge [Mass.] 1991) 181–183.

² Scholars agree that the version cited in Dem. 24.149–151 is not authentic but probably an interpolated reconstruction by a later editor. See S. Johnstone, *Disputes and Democracy. The Consequences of Litigation in Ancient Athens* (Austin 1999) 34; E. Harris, *The Rule of Law in Action in Democratic Athens* (Oxford 2013) 101 n1.

grammarians.³ Accordingly, many of its individual elements leave room for doubt.⁴ Two specific clauses do, however, seem to have certainly been in the oath. The dikasts swore, perhaps in the opening lines of the oath, to cast their vote “in accordance with the laws” (κατὰ τοὺς νόμους).⁵ And they swore to cast their vote in accordance with justice or, as the phrase probably went, “in accordance with their most just consideration” (γνώμη τῇ δικαιοτάτῃ).⁶

The question of the scope of application of the second clause (the ‘justice clause’) has been the subject of particular controversy. This is not surprising, for that question plays into a much larger debate concerning the very nature of the rule of law in classical Athens. Some scholars conceive of the justice clause as a general principle that was understood to apply to all judicial decisions made by the dikasts. On the most common version of this view, the justice clause functioned as something like a principle of ‘equity’, under which the requirement of rigid adherence to the laws could be downplayed, or even set aside, in favour of other, extra-legal considerations, when the particular circumstances seemed to the dikasts to require it.⁷ Other scholars have

³ M. Fränkel, “Der attische Heliasteneid,” *Hermes* 13 (1878) 452–466.

⁴ For a step-by-step discussion of Fränkel’s reconstruction see D. C. Mirhady, “The Dikast’s Oath and the Question of Fact,” in A. Sommerstein and J. Fletcher (eds.), *Horkos. The Oath in Greek Society* (Liverpool 2008) 49–51.

⁵ Aeschin. 3.6, 31, 198; Dem. 18.121; 20.118; 21.42, 211; 22.43; 23.101; 24.188; 32.45; 34.45; 36.26; 46.27; 58.25, 36; 59.115; Din. 1.17; Hyp. 2.5; Isae. 11.6; Isoc. 15.173, 19.15; Lys. 22.7. Cf. Fränkel, *Hermes* 13 (1878) 453; Johnstone, *Disputes and Democracy* 35; Mirhady, in *Horkos* 49–50. In some speeches, the speaker expands the phrase to include “the decrees of the people” (Din. 1.84, Hyp. 5.1) or even “the decrees of the people and of the council of five hundred” (Dem. 19.179).

⁶ Vote in accordance with justice: Dem. 21.4, 94; 58.61; Andoc. 1.31; Isoc. 19.15–16. Vote in accordance with most just consideration: Dem. 20.118, 23.96, 39.40–41, 57.26. Cf. Johnstone, *Disputes and Democracy* 40; Mirhady, in *Horkos* 50.

⁷ P. Vinogradoff, *Outlines of Historical Jurisprudence* II (Oxford 1922) 68; L. Gernet, *Droit et société dans la Grèce ancienne* (Paris 1965) 57; S. C. Todd, *The*

argued for a more legalist interpretation of the status of the justice clause in the dikastic oath. What distinguishes this interpretation from the first is that it takes the application of the clause to be much more restricted: considerations of justice were meant to guide the reasoning of the dikasts only in those specific cases where there happened to be no laws covering the particular situation.⁸ In all other cases, the oath demanded, considerations of legality should be all that mattered. In the words of one of the most prominent contemporary proponents of this interpretation, the oath's requirement that the dikasts judge in accordance with their most just consideration was meant to be nothing more than "a default clause to be used only in exceptional cases."⁹

The aim of the present paper is not to revisit yet again the many disputed passages that have been marshalled by both sides, nor to attempt to resolve the issue decisively in favour of one interpretation or the other. My contribution to the debate will be more modest, if nonetheless valuable. What I want to do is to consider a piece of evidence the relevance of which for understanding the character of the dikastic oath has been overlooked. The passage is in Aristotle's discussion of the *Politeia* ('Ideal City') of Hippodamus of Miletus in the second book of the *Politics* (2.8). According to Aristotle, Hippodamus claimed that the existing legal system ran the risk of forcing the dikasts into violating their oath, and he accordingly proposed a new legal procedure for his ideal city designed to prevent this form of dikastic perjury in the law courts (1268a1–6). The paper will

Shape of Athenian Law (Oxford 1993) 54; A. Lanni, *Law and Justice in the Courts of Classical Athens* (Cambridge 2006) 72. Support for this interpretation has traditionally been found in the extensive use of extra-legal argumentation in Athenian law court speeches as well as in passages from Aristotle's *Rhetoric* 1.15.

⁸ H. Meyer-Laurin, *Gesetzprinzip und Billigkeit im attischen Prozess* (Weimar 1965) 29; Harris, *The Rule of Law* 104–109. This interpretation has traditionally drawn support from the suggestion, made twice in the Demosthenic corpus, that the oath-bound dikasts are meant to follow their most just consideration "concerning matters where there are no laws" (20.118, 39.40).

⁹ Harris, *The Rule of Law* 109.

undertake a close reading of Hippodamus' argument, as presented and discussed by Aristotle. This close reading will lead me to conclude that the discussion of Hippodamus in the *Politics* speaks strongly against any interpretation of the dikastic oath that attempts to reduce the justice clause to something like a default clause to be used only in exceptional cases. What Hippodamus took the dikasts under the existing (Athenian) system to be violating, I will argue, must be understood as a general requirement to vote in accordance with justice.

2. *Hippodamus' legal procedure*

Among his contemporaries, as well as in modern scholarship, Hippodamus of Miletus (active mid-fifth century B.C.) seems to have been best known in his capacity of architect and urban planner.¹⁰ But according to Aristotle in the *Politics*, he was also "the first person not engaged in practical politics who ventured to say something about the best *politeia*" (1267b29–30).¹¹ Among other striking features, such as a threefold division of the citizens and the land (1267b30–37) and a law to promote innovation

¹⁰ In addition to being widely credited with having invented the orthogonal street plan, he is reported to have been involved in the founding of Rhodes, the Piraeus, and the colony of Thurii. On the dating of Hippodamus and his career in urban planning: A. Burns, "Hippodamos and the Planned City," *Historia* 25 (1976) 414–428; G. Shipley, "Little Boxes on the Hillside: Greek Town Planning, Hippodamos and Polis Ideology," in M. H. Hansen (ed.), *The Imaginary Polis* (Copenhagen 2005) 335–403. Shipley includes a handy collection of ancient sources for Hippodamus.

¹¹ Aristotle is our only source for the political ideas of Hippodamus. Stobaeus' *Florilegium* contains five extensive fragments from a *Politeia* by "Hippodamus the Pythagorean" and one fragment from a work on happiness by "Hippodamus the Thurian," but both are widely believed to be later forgeries (cf. J. C. Hogan, "Hippodamus and the Best Form of Government and Law," in *The Western Political Quarterly* 12 [1959] 763–783; Chr. G. Tortzen, "Jens Baggesen og Hippodamos," *Meddelelser fra Klassisk Arkæologisk Forening* 37 [1997] 22–28). The best general discussion of Hippodamus as a political thinker is H.-J. Gehrke, "Bemerkungen zu Hippodamos von Milet," in W. Schuller (ed.), *Demokratie und Architektur. Der hippodamische Städtebau und die Entstehung der Demokratie* (Munich 1989) 58–68.

(1268a6–8), Hippodamus' *politeia* had included provisions for a reformed and improved judicial system (1267b37–1268a6):¹²

ᾧετο δ' εἶδη καὶ τῶν νόμων εἶναι τρία μόνον· περὶ ὧν γὰρ αἱ δίκαι γίνονται, τρία ταῦτ' εἶναι τὸν ἀριθμόν, ὕβριν βλάβην θάνατον. ἐνομοθέτει δὲ καὶ δικαστήριον ἐν τῷ κύριον, εἰς ὃ πάσας ἀνάγεσθαι δεῖν τὰς μὴ καλῶς κεκρίσθαι δοκούσας δίκας· τοῦτο δὲ κατεσκεύαζεν ἐκ τινῶν γερόντων αἰρετῶν. τὰς δὲ κρίσεις ἐν τοῖς δικαστηρίοις οὐ διὰ ψηφοφορίας ᾧετο γίνεσθαι δεῖν, ἀλλὰ φέρειν ἕκαστον πινάκιον, ἐν ᾧ γράφειν, εἰ καταδικάζοι ἀπλῶς, τὴν δίκην, εἰ δ' ἀπολύοι ἀπλῶς, κενόν, εἰ δὲ τὸ μὲν τὸ δὲ μὴ, τοῦτο διορίζειν. νῦν γὰρ οὐκ ᾧετο νενομοθετησθαι καλῶς· ἀναγκάζειν γὰρ ἐπιπορκεῖν ἢ ταῦτα ἢ ταῦτα δικάζοντας.

He also held that there are only three kinds of law. For those things concerning which legal actions are brought are three in number: outrage, damage, and death. He also established one single supreme law court, to which all those legal disputes that did not seem to have been well decided should be referred. This court he arranged to be manned by selected elders. He held that judgments in the law courts should not be reached by means of voting, but that each [dikast] should carry a tablet: if he simply condemned, he should write the penalty; if he simply acquitted, he should leave it blank; and if it was partly one partly the other, he should specify that. For he believed that the current arrangement is not a good one. For it forces the dikasts to commit perjury when they decide either one way or the other.

We can identify three different proposals in Aristotle's summary of Hippodamus' legal system: (1) a classification of laws into three kinds; (2) a 'supreme court' consisting of selected elders, to which cases from other law courts could be referred; and (3) the proposal, already mentioned above, concerning a reformed legal procedure. Proposals (1) and (2) are clearly of great interest to the historian of legal and political thought in their own right.¹³ But in this paper I will focus on the third and

¹² Text: W. D. Ross (Oxford 1957); transl. by the author.

¹³ The notion of a court of appeals (2) represents a radical departure from Greek practice and may have provided a model for Plato's legal system in the

last of Hippodamus' proposals. According to Aristotle, he criticised the existing legal procedure for forcing the dikasts into perjury when it required them to vote for either condemnation or acquittal. As a solution to this problem, he proposed a modified procedure, under which the dikasts, in addition to condemnation and acquittal, could also choose the third option of specifying on their tablets an intermediate verdict.

Before turning to the details of Hippodamus' argument, we need to consider the relevance of this passage for the question about the character of the Athenian dikastic oath. For at first glance it is perhaps not entirely clear why *Politics* 2.8 would be a promising context in which to search for clues about Athenian legal institutions. After all, Aristotle is here discussing the ideas of a Milesian thinker, not an Athenian, and at one point he explicitly remarks on Hippodamus' apparent ignorance of certain Athenian institutions (state provision for war orphans, 1268a8–11). However, I do not think this should lead us to disregard Aristotle's discussion of Hippodamus as a potential source for understanding the Athenian legal system. The fact that Hippodamus was not an Athenian citizen does not mean that he was a stranger to Athenian politics and society. Aristotle himself bears witness to Hippodamus' strong link to Athens when he refers to the latter's role in the founding of Piraeus (1267b23), and this link is confirmed by other ancient sources, which also suggest that he lived for at least part of his life in Piraeus, where he owned a house and had the local agora named after him.¹⁴

Laws (cf. P. Bise, "Hippodamos de Milet," *AGPh* 35 [1923] 16–17; E. Schütrumpf, *Aristoteles. Politik. Buch II–III* [Darmstadt 1991] 267; T. J. Saunders, *Aristotle. Politics I and II* [Oxford 1995] 142). Some scholars have found in (1) a strikingly modern, even democratic, approach to law as aimed exclusively at managing interpersonal conflict and securing social order, rather than at promoting the happiness of society and the virtue of its citizens (F. Susemihl and R. D. Hicks, *The Politics of Aristotle. Books I–V* [London 1894] 332–334; cf. Saunders 141–142).

¹⁴ Hippodamus' life in Piraeus: schol. Ar. *Eq.* 327. The Hippodamean agora: Andoc. 1.45, Xen. *Hell.* 2.4.11. Lana suggests, on the basis of the Aristophanic scholiast's reference to his ownership of a house, that Hippodamus

Moreover, he is reported to have been well known among the Athenians (who held him in high esteem), and to have taken part in the Athens-led founding of Thurii.¹⁵ So in spite of what his alleged ignorance of Athenian provisions for war orphans might initially seem to imply, Hippodamus' life and career were in fact very much centred on Athens, and it is not difficult to imagine that he would have had Athenian institutions in mind in his critical discussion of the existing legal system.

Moreover, two observations about the text itself strongly encourage the use of Aristotle's discussion of Hippodamus' argument as evidence for the general character of the Athenian dikastic oath. (1) If Hippodamus had been taking his starting point in a significantly different foreign variant of the oath, we would have expected Aristotle to come to the aid of his (predominantly Athenian or Athens-oriented) readers/listeners by pointing this out explicitly and explaining how that oath differed from the well-known Athenian version. But Aristotle does no such thing. Instead he seems to simply assume that Hippodamus had something like the standard Athenian oath in mind (either the actual Athenian oath itself or a non-Athenian version that did not differ from the Athenian in any significant way). (2) Aristotle does not specify what element or clause in the oath the dikasts were alleged by Hippodamus to violate. He seems to assume that Hippodamus had in mind the violation of a general requirement in the oath and that the oath itself would be sufficiently well known to his readers/listeners that he would not have to spell out precisely what that requirement was. Taken together, these two considerations suggest that a reconstruction of the reasoning behind Hippodamus' proposal for a reformed legal procedure could likely yield a valuable clue as to how the

must have been awarded Athenian citizenship, which in turn explains how his son, Archeptolemus, could later become active in Athenian politics (I. Lana, "L'Utopia di Ippodamo di Mileto," *RF (Bologna)* 40 [1949] 128–129; Archeptolemus is referred to in Plut. *X orat.* 883A2 and schol. Ar. *Eq.* 327).

¹⁵ Reputation in Athens: schol. Ar. *Eq.* 327. Thurii: Hesychios s.v. "Hippodamou nemesis" (cf. Burns, *Historia* 25 [1976] 421).

general requirements of the dikastic oath were perceived and understood in a classical Athenian context.

The scholarly literature on *Politics* 2.8 has seen two fundamentally different ways of making sense of Hippodamus' argument.¹⁶ The first, the 'legalist' interpretation, holds that the requirement in the oath that the existing judicial procedure allegedly forces the dikasts to violate is specifically the requirement to vote in accordance with the laws. The idea here is that the legal charge, or indictment, could sometimes contain several different counts and that an individual dikast might find himself convinced that the accused is guilty of only some of these counts but not of others. The legal indictment on which Socrates was put on trial, for instance, famously charged him with both (1) not recognising the gods recognised by the polis and introducing new gods, and (2) corrupting the young.¹⁷ An oath-bound dikast at Socrates' trial who believed that Socrates was guilty of (1) but not of (2) would find himself forced to choose between two outcomes of equally questionable legality: either condemning Socrates on both counts or acquitting him on both. Neither option, it seems, would be compatible with his oath to vote in accordance with laws. Hippodamus' solution, on the legalist interpretation, should be understood as an attempt to prevent such potential perjury by allowing his dikasts the freedom to distinguish between separate elements of the indictment and to specify, on their tablet, which elements they agree with and which they do not.¹⁸

On the second view, the 'justice' interpretation, the problem with the current judicial procedure is that it sometimes forces the dikast to violate a general requirement to vote in accordance

¹⁶ Scholars have traditionally adopted one or the other reading, usually without any consideration or discussion of the alternative view.

¹⁷ The legal indictment is cited in Diog. Laert. 2.40. Cf. M. H. Hansen, *The Trial of Sokrates – from the Athenian Point of View* (Copenhagen 1995) 16.

¹⁸ The legalist interpretation is found in: W. I. Newman, *The Politics of Aristotle II* (Oxford 1887) 306; A. Cassayre, *La Justice dans les cités grecques* (Rennes 2010) 333.

with justice (or, alternatively, with “the most just consideration”), namely in those cases where the procedure forces him to choose between two outcomes, neither of which seems to him to represent a just (or the most just) outcome. This situation could arise in cases where the dikast agrees with the accuser that the accused is guilty as charged and thus deserves a punishment, but also believes that, given the circumstances, the specific punishment demanded in the charge would be unjust (or at least less just than it could be). On this reading, then, the solution proposed by Hippodamus should be understood in penal rather than legal terms: the dikast who finds the accused guilty has the option to disregard the punishment demanded and to specify instead, on his tablet, what he takes to be the most just punishment in this particular case.¹⁹

The choice between these two interpretations has important implications for the question with which we began, concerning the general character of the dikastic oath in Athens. If the legalist interpretation is right, Aristotle’s discussion of Hippodamus in the *Politics* supports the view that the oath was generally understood to require that dikastic decision-making first and foremost adhere to the laws. But if the justice interpretation is right, then that same discussion constitutes strong evidence that the oath was also naturally associated with a general requirement to vote in accordance with justice. Now, unfortunately, it does not seem to me possible to choose definitively between the two different lines of interpretation on the basis of Aristotle’s summary of Hippodamus’ proposal alone (1268a1–6). Not only is that summary highly sketchy and compressed, it is also phrased in rather vague terms that offer little help on this specific question: (1) The Greek term *dikē* (a3) is notoriously protean and can, in a context such as this, mean both “legal indictment,” “judgment,” and

¹⁹ The justice interpretation is found in: Schütrumpf, *Politik* 274; Saunders, *Politics* 144; A. Boyer, “Du nouveau chez les Anciens: Remarques a partir d’Hippodamos,” *RPhilos* 198 (2008), 413; C. D. C. Reeve, *Aristotle. Politics. A New Translation* (Indianapolis/Cambridge 2017) 270 n.230.

“punishment.”²⁰ So the fact that the intermediate verdict in Hippodamus’ scheme is contrasted with simply “writing the *dike*” does not reveal whether that intermediate verdict was understood by Hippodamus (and Aristotle) along legal or penal lines. (2) Aristotle’s description of the intermediate position that a dikast may wish to adopt on the issue—τὸ μὲν τὸ δὲ μή (a4)—could refer both to a position reached by making strictly legal distinctions (‘guilty on this count, but not on that’) and to a position reached by distinguishing more general considerations for and against the accused, which should be taken into account in determining what is a just punishment in his case (‘guilty in this sense, but not in that sense’). (3) The same is true of the phrase τοῦτο διορίζειν (a4–5), which Aristotle uses for what the dikast with an intermediate view should write on his tablet. For it is possible to read that phrase both as suggesting that the dikast should specify which counts of the legal charge he agrees with and which he does not (the legalist interpretation) and that he should specify what he believes the just punishment would be in this case (the justice interpretation).

However, this indeterminacy in Aristotle’s account should not lead us to abandon all hope of coming to a better understanding of Hippodamus’ argument for a reformed legal procedure. For later in the same chapter of the *Politics* Aristotle returns to that argument and subjects it to an extended, and highly critical, examination (1268b4–22). This later passage provides important clues as to how we should understand Hippodamus’ original argument. In fact, I will argue that a closer look at Aristotle’s critical discussion of Hippodamus’ argument offers good reasons for rejecting the legalist interpretation and for adopting the justice interpretation.

3. Aristotle’s criticism

Aristotle’s critical discussion of the legal system in Hippodamus’ ideal *politeia*, later in the chapter, is somewhat selective. There is no mention of Hippodamus’ three-fold categorisation

²⁰ Cf. R. Hirzel, *Themis, Dike und Verwandtes, ein Beitrag zu Geschichte der Rechts-idee bei den Griechen* (Leipzig 1907) 104–106.

of laws, nor of his innovative idea for a gerontic court of appeals. Instead, Aristotle passes directly from an elaborate discussion of the tripartition of land and citizens (1268a16–1268b4) to an equally elaborate discussion of one specific element of Hippodamus' legal system, his reform of how judgments are made in the law courts (1268b4–22):

οὐ καλῶς δ' οὐδ' ὁ περὶ τῆς κρίσεως ἔχει νόμος, τὸ κρίνειν ἀξιούν διαιροῦντα, τῆς δίκης ἀπλῶς γεγραμμένης, καὶ γίνεσθαι τὸν δικαστὴν διαιτητὴν. (1) τοῦτο δὲ ἐν μὲν τῇ διαίτῃ καὶ πλείοσιν ἐνδέχεται (κοινολογοῦνται γὰρ ἀλλήλοις περὶ τῆς κρίσεως), ἐν δὲ τοῖς δικαστηρίοις οὐκ ἔστιν, ἀλλὰ καὶ τοῦναντίον τούτου τῶν νομοθετῶν οἱ πολλοὶ παρασκευάζουσιν ὅπως οἱ δικασταὶ μὴ κοινολογῶνται πρὸς ἀλλήλους. ἔπειτα πῶς οὐκ ἔσται ταραχώδης ἡ κρίσις, ὅταν ὀφείλῃν μὲν ὁ δικαστὴς οἴηται, μὴ τοσοῦτον δ' ὅσον ὁ δικαζόμενος; ὁ μὲν γὰρ εἴκοσι μνᾶς, ὁ δὲ δικαστὴς κρίνει δέκα μνᾶς (ἢ ὁ μὲν πλεόν ὁ δ' ἔλασσον), ἄλλος δὲ πέντε, ὁ δὲ τέτταρας, καὶ τοῦτον δὴ τὸν τρόπον δηλὸν ὅτι μεριοῦσιν· οἱ δὲ πάντα καταδικάσουσιν, οἱ δ' οὐδέν. τίς οὖν ὁ τρόπος ἔσται τῆς διαλογῆς τῶν ψήφων; (2) ἔτι δ' οὐδὲν ἐπιорκεῖν ἀναγκάζει τὸν ἀπλῶς ἀποδικάσαντα ἢ καταδικάσαντα, εἴπερ ἀπλῶς τὸ ἐγκλημα γέγραπται, δικαίως· οὐ γὰρ μηδὲν ὀφείλῃν ὁ ἀποδικάσας κρίνει, ἀλλὰ τὰς εἴκοσι μνᾶς· ἀλλ' ἐκεῖνος ἥδη ἐπιорκεῖ, ὁ καταδικάσας, μὴ νομίζων ὀφείλῃν τὰς εἴκοσι μνᾶς.

The law concerning judgment is also problematic, i.e. the law that prescribes that judgments should be reached by making distinctions, though the charge is written in simple terms, and that the dikast should be turned into an arbitrator. This is possible in an arbitration process, even with several arbitrators (for they can confer with each other about the judgment), but it is not possible in the law courts. Indeed, most lawgivers establish the opposite principle and arrange things so that the dikasts do not confer with each other. How then will the judgment not be confused, when the dikast thinks that the accused should pay something, but not as much as the accuser thinks? For the latter think 20 minae are due, but the dikast judges that 10 minae are due (or the one more, the other less), another dikast 5 minae, another 4, and in this way it is clear that they will be split. And some will condemn to the full amount, others nothing. So how will the votes be processed? Furthermore, nothing forces the dikast who either simply acquits or simply condemns into committing perjury, if indeed the plaint

has been written in a simple way, as is proper. For he who condemns does not judge that the accused should pay nothing, but rather that the accused should not pay 20 minae. But he who, believing that the accused should not pay 20 minae, nonetheless condemns him—he is the one who is committing perjury.

We can identify two separate points of criticism in this passage. Aristotle's first and longest argument concerns the practical feasibility of Hippodamus' proposal (1268b6–17). In the second argument, Aristotle defends the current manner of reaching decisions in the law courts, arguing that the requirement that the dikasts side with one party or the other does not necessarily involve the risk of dikastic perjury, as Hippodamus thought (b17–22). In what follows, I wish to take a closer look at these two arguments in turn. Can they help us decide between the legalist and the justice interpretation?

3.1 *Aristotle's argument from practicality (1268b6–17)*

Let us begin with Aristotle's first argument, aimed at the practicality of Hippodamus' proposal. The problem with that proposal, as Aristotle sees it, is that it is hard to see how it can deliver a judgment that is not “confused” (ταραχώδης, b11). After all, under Hippodamus' scheme the dikasts would presumably often come up with a wide range of different individual verdicts, some settling for various intermediate positions, others siding either simply with the accuser or simply with the accused. But since law courts (unlike arbitration) do not allow for conference and deliberation among the dikasts, it is hard to see how these many individual verdicts could be processed into one single final judgment.²¹ The underlying assumption here seems to be

²¹ Aristotle's additional remark about the prohibition against dikastic conferring established by many lawgivers (b9–11) has puzzled some commentators. What is the relevance of this remark in a criticism of Hippodamus, who, presumably, could simply have chosen not to follow other lawgivers in this regard? (Cf. N. Loraux, *The Divided City* [New York 2002, French ed. 1997] 237.) But the remark does make sense in the context when we consider it not just as a remark about what lawgivers in fact happen to do, but also as an allusion to their reasons for doing so. Aristotle's point, I take it, is that, even if conferring were possible among several hundred dikasts (which it is

that Hippodamus' law courts would be large popular law courts, not unlike the Athenian *dikasteria* with their dikastic panels of between 200 and several thousand members.²² Whereas the current system allows for a relatively easy way of reaching a decision in law courts of this magnitude (counting and comparing the votes for and the votes against), things would be far more complicated in a system that allowed each of the hundreds or thousands of dikasts to formulate individual intermediate verdicts.

At first glance, Aristotle's examples of dikasts who each come up with a different verdict (b11–16) clearly seem to support the justice interpretation, as outlined above. For what we get in those examples is a list of different fines or penalties (20, 10, 5, and 4 minae). This would suggest that Aristotle understands the intermediate option that Hippodamus offered his dikasts along penal rather than legal lines: the idea seems to be that the oath-bound dikast could avoid perjury by formulating what he himself believes is the (most) just punishment for the condemned (rather than by distinguishing between counts in the legal indictment). But while Aristotle's description of dikastic disagreement does seem to point in the direction of the justice interpretation, it is not strictly speaking incompatible with the legalist interpretation. After all, Aristotle could perhaps be using the reference to different penalties as shorthand for different legal counts carrying separate penalties. On this reading, the variety of punishments proposed (20, 10, 5, 4 minae) should be understood as an expression of the fact that the dikasts disagree about the underlying legal question: each individual dikast would formulate his proposed penalty on the basis of his beliefs about which parts of the indictment the accused was guilty of and which he was not. Of course, this line of interpretation requires reading quite a lot

not), it would still not be a good idea to allow it: all lawgivers know that a fair and impartial trial requires that the ballot be secret, but this is hard to achieve in a system that allows for dikastic conferring. Cf. Newman, *Politics* 305; Saunders, *Politics* 144.

²² Cf. E. Barker, *The Politics of Aristotle* (Oxford 1946) 71 n.1; Schütrumpf, *Politik* 267; Saunders, *Politics* 144.

into Aristotle's examples, but it is worth considering since it could perhaps help us develop a more charitable reconstruction of his argument as a whole. Proponents of the justice interpretation have sometimes worried about the force of Aristotle's objection to the practicality of Hippodamus' scheme. As Trevor Saunders complains, "the obvious answer" to Aristotle's rhetorical question in b16–17 ("So how will the votes be processed?") seems to be: "add up the figure, and divide by the number of jurors. Why is he making such heavy weather of the matter?" (*Politics* 144). But if the penalty proposals listed by Aristotle are taken as shorthand for different assessments of the counts on the legal charge, Aristotle's argument would be less vulnerable to this objection. After all, a clear decision about what exactly the accused is guilty of cannot be reached simply by means of the mathematical operation of taking the average. So the legalist reading would offer a neat solution to Saunders' worry. But on the other hand, if that is what Aristotle really had in mind here, why would he choose to make his point in such an elliptical and potentially misleading fashion? One must conclude, I think, that Aristotle's examples of dikastic disagreement do not in themselves provide clear support for either of the two interpretations under consideration. While the most natural reading of those examples tends towards the justice interpretation, what Aristotle says can also be understood in a way that supports the legalist interpretation.

More promising, I think, is Aristotle's initial gloss on Hippodamus' proposal as "turning the dikast into an arbitrator" (γίνεσθαι τὸν δικάστην διαιτητήν, 1268b6). Arbitration (*diaita*), in both its official and unofficial form, was an important means of dispute resolution in classical Athens, but it differed in important ways from how trials were conducted in the law courts.²³ In particular, in marked contrast to the Athenian dikasts, who were required to side with one party or the other, the primary

²³ On the institution and procedure of arbitration in Athens: Todd, *Shape of Athenian Law* 123–125.

aim of the Athenian arbitrator was to formulate, alone or together with a small number of colleagues, a compromise and attempt to bring about a reconciliation between the parties.²⁴ Importantly, Aristotle elsewhere explicitly contrasts this flexibility on the part of the arbitrator with a strictly legalist approach to dispute resolution. The context is the discussion of the virtue of *epieikeia* in the *Rhetoric* 1.13. Whereas the first part of that discussion focuses on *epieikeia* in the technical sense of the ability to rectify the inevitable shortcomings of the law, towards the end of the chapter Aristotle emphasises the more traditional Greek conception of the virtue, understood in terms of indulgence and leniency.²⁵ The *epieikēs* man, Aristotle explains there, is someone who does not stubbornly insist on his rights and on the application of strict legal justice. Having been wronged, he is someone who adopts a forbearing attitude towards those who have wronged him, allowing the particular circumstances of the situation to be taken into account and choosing negotiation over aggression (*Rhet.* 1374b10–19).²⁶ This sentiment finds expression in the *epieikēs* man's preference for referring his disputes to arbitration (εἰς δῖαιταν) rather than to the law courts (εἰς δίκην, b19–20). As Aristotle remarks, this preference is due to the fact

²⁴ [Arist.] *Ath. Pol.* 53.2 states this explicitly with regard to official arbitration. But compromise and reconciliation were also central to unofficial arbitration: A. Scafuro, *The Forensic Stage. Settling Disputes in Graeco-Roman New Comedy* (Cambridge 1997) 117–122, 131–135. Examples of what such arbitration compromises could look like are found in [Dem.] *Against Neaera* 59.46, 70. Cf. also Aristotle's own metaphorical use of the figure of the arbitrator, who is “most trusted” since he is “the person in the middle” (ὁ μέσος), in his discussion of the crucial political role of the middle class (*Pol.* 1297a5–6).

²⁵ On the two distinct ‘legacies’ (theoretical and traditional) that inform discussions of *epieikeia* in Aristotle: J. Brunschwig, “Rule and Exception: On the Aristotelian Theory of Equity,” in M. Frede and G. Striker (eds.), *Rationality in Greek Thought* (Oxford 1996) 115–155. On the emphasis on traditional *epieikeia* in the last part of *Rhet.* 1.13: C. Horn, “Epieikeia: The Competence of the Perfectly Just Person in Aristotle,” in B. Reis (ed.), *The Virtuous Life in Greek Ethics* (Cambridge 2006) 155–156.

²⁶ This traditional conception of the *epieikēs* man, as characterised by *elattōsis* (“lessening, concession”), is also found in *Eth. Nic.* 1136b20–21, *Top.* 141a16. Cf. Brunschwig, in *Rationality in Greek Thought* 124.

that the arbitration process, unlike the law court, is characterised by the same sentiment that we find in the *epieikēs* man himself: “For the arbitrator looks to what is *epieikes*, whereas the dikast looks to the law. This, in fact, is why the arbitrator was invented: so that the *epieikes* may hold sway” (b20–22).

The close association between arbitration and the values of the *epieikēs* man reveals something important about Aristotle’s view of the intermediate position that an arbitrator traditionally occupies in a dispute between two parties. What distinguishes the arbitrator from the dikast is not that he adopts a more fine-grained attitude to the legal issue, identifying different potential legal offences and holding the accused to account only for those he seems to have committed. After all, that would turn arbitration into a form of dispute resolution that is in a way *more* legalist than the law court trial. But as we saw, the *epieikēs* man is one who prefers to refer his disputes to arbitration precisely because that is a way *not* to insist on strict legal justice. What the arbitrator does is to formulate a decision under the guidance of those principles of *epieikeia* that also inform the attitude of the *epieikēs* man, i.e. a decision that takes into consideration the particular circumstances of the case and interprets those circumstances in a way that promotes compromise and reconciliation. Viewed against this background, Aristotle’s gloss on Hippodamus’ proposal in *Politics* 2.8 speaks strongly in favour of the justice interpretation and against the legalist interpretation: a system that allows the dikasts to make fine legal distinctions in the indictment would hardly have been referred to by Aristotle as “turning the dikast into an arbitrator.” By contrast, it would be perfectly natural for him to gloss in such manner a system that allows the dikasts, upon finding the accused guilty as charged, to disregard the punishment demanded in the charge and instead formulate the punishment they find most just in light of the circumstances.

3.2 Aristotle’s defense of the current system (1263b17–22)

In his second objection to Hippodamus, Aristotle argues that the current requirement in the law courts that dikasts vote either for one or the other party does not in fact involve the risk of perjury, contrary to what Hippodamus thought. For the ques-

tion that faces dikasts in a law court trial, he claims, can itself be understood as a question that allows only of a yes or no answer. It is easy to see how this argument can be reconstructed in a way that is compatible with the justice interpretation of Hippodamus' proposal: What the oath-bound dikasts are really being asked in a trial, Aristotle argues, is not what the just outcome of the dispute under consideration would be. Rather, they are being asked the specific question: "Is it just that the accused be convicted on the 20 minae charge?" This is a question that allows only of a yes or a no answer: either it is just or it is not just that the accused be convicted on the 20 minae charge. So the dikast cannot find himself in a situation where his siding with one party or the other forces him to violate his oath to vote in accordance with justice. Now, as some scholars have noted, Aristotle's argument, on this reconstruction, commits him to some quite controversial views regarding justice and punishment. He expects the conscience of the dikast to tolerate that an accused is acquitted pure and simple in a case where a punishment of 20 minae is demanded in the charge, but the dikast himself thinks 19 minae are due.²⁷ But while Aristotle's argument on the justice interpretation might seem somewhat pedantic, we can at least make good sense of it as an argument against Hippodamus' proposal. And this is less easy to do in the case of the legalist interpretation. For it is not at all clear how questions of legality can in the same way be successfully conceptualised as a yes-or-no issue that avoids the risk of dikastic perjury. The simple question "Is it in accordance with the laws that the accused is condemned of the legal charge?" would still pose a problem for the dikast who has sworn to vote in accordance with the laws, but who believes that the accused is guilty of only some of the counts on the charge. So it seems that, on the legalist interpretation, Aristotle's argument either would be confused or would completely miss its target.²⁸

²⁷ Cf. Saunders, *Politics* 144–145; P. L. P. Simpson, *A Philosophical Commentary on the Politics of Aristotle* (Chapel Hill 1998) 108–109.

²⁸ Newman, a proponent of the legalist interpretation, accepts this negative assessment of Aristotle's argument (*Politics* 306).

However, before we conclude that the second argument therefore supports the justice interpretation, two further issues need to be addressed. First, one might worry that the justice interpretation seems to saddle Aristotle with a strikingly confused understanding of the position he is criticising. The issue here concerns the question of what specific type of Athenian trial Aristotle took Hippodamus to have in mind in his criticism of the existing legal system. Textbooks on Athenian law traditionally divide Athenian trials into two main types, depending on how the penalty is determined in case of conviction. In an *agōn atimētos*, the penalty was fixed by statute: if the accused was condemned by the dikasts, he would suffer the penalty specified in the law under which he was charged. In an *agōn timētos*, by contrast, the penalty would be determined as part of the trial process itself. If the dikasts voted for conviction, the successful accuser and the condemned would each propose a penalty, and the dikasts would choose between these two alternatives in a second round of voting. Now, on the justice interpretation, Aristotle's second argument against Hippodamus seems to assume that the latter had the *agōn atimētos* specifically in mind. Aristotle's argument hangs on the idea that the dikast's rejection of a specific penalty (20 minae) does not in itself imply anything about what other outcome the dikast does think would be just, only that the specific penalty on the table is not it. Hence, a dikast who believes that some intermediate penalty (19 minae) would be just can in good conscience vote against the accuser, even though this would in practice lead to acquittal. Since this argument requires that the dikast's choice can be understood as the choice between assenting to or rejecting a single proposition, it only really seems to work as a defense of the existing legal system in those Athenian trials where a dikast is faced with the choice of either imposing some specific penalty or simply letting the accused off scot-free (i.e. *agones atimētoi*). It is not at all clear how it could deal with a *timētos* trial, where the dikast would have

to choose between two different penalty proposals.²⁹ But this conclusion seems to fit rather badly with Aristotle's preceding account of dikastic disagreement (1268b11–17, discussed above). For in that passage, he speaks as though the penalty demanded in the charge is one that is proposed by the accuser (“when the dikast thinks that the accused should pay something, *but not as much as the accuser thinks*,” b11–13).³⁰ In other words, Aristotle here seems to assume that Hippodamus had in mind an *agōn timētos*, where the penalty claimed in the charge is determined by means of *timēsis* (“assessment”), not by statute. So it might seem that, on the justice interpretation, Aristotle comes off as strikingly confused about what precisely he takes Hippodamus to be arguing against. Neither of the two traditional Athenian trial types seems compatible with what Aristotle says in both of his arguments.³¹

I believe this objection to the justice interpretation can be successfully met. One way of meeting it, of course, would be to challenge the assumption that the classification into *timētoi* and *atimētoi* trials represents an exhaustive description of Athenian law court trials.³² But I think a different, more attractive strategy for responding to the objection is possible. The issue here turns on the question of what it means for an accuser to “propose” a specific penalty within the Athenian legal system. Historians often stress the procedural orientation and so-called ‘open

²⁹ The dikasts in Socrates' trial were, in the second round of voting, charged with deciding between the penalty proposal of the accusers (death) and that of the accused (3000 drachmae). It is not clear how this choice can be immunized from the risk of perjury in the way Aristotle suggests.

³⁰ ὅταν ὀφείλῃν μὲν ὁ δικάστης οἷηται, μὴ τοσοῦτον δ' ὅσον ὁ δικάζόμενος. The obvious verbal supplement in the comparative clause would be another οἷηται.

³¹ The only scholar who seems to have noted this problem is Gernet (“ici la pensée paraît confuse”: “Les *Lois* et le droit positif” in E. des Places, *Platon* XI.1 [Paris 1951] cxliii n.3).

³² Todd points to cases where the schema does not seem to fit very well (*Shape of Athenian Law* 134).

texture' of Athenian laws.³³ While the laws typically specified in great detail how a case is to be brought to court and what the potential risks and penalties for both parties are, they rarely provided a definition of the offence itself. In practice, this meant that there was a significant overlap between different legal actions. Someone who had been wronged often had a choice about the kind of legal action he would bring against the offender.³⁴ The *locus classicus* for this idea of procedural flexibility is from Demosthenes *Against Androktion*, where the speaker goes through a list of different legal actions available against thieves: "You are strong and confident: use *apagoge*; you risk a thousand drachmae fine. You are weaker: use *ephegesis* to the magistrates; they will then manage the procedure. You are afraid even of that: use a *graphe*. You have no confidence and are too poor to risk a 1000 drachmae fine: bring a *dike* before the arbitrator and you will run no risk" (Dem. 22.26–27). The speaker's main focus, here, is on the difference between types of legal action in terms of their risks for the accuser himself. But the choice of legal action also had consequences for the accused, if he were condemned. For instance, depending on the type of action brought against him, a condemned thief would suffer everything from a fine to execution.³⁵ Importantly, this meant that, in Athens, an accuser could in some sense be said to have 'chosen' a specific penalty proposal even in those cases where the resulting trial would be of the *atimētos* type. He made this choice when he chose to bring a certain type of legal action. So Aristotle's reference in b11–12 to an

³³ R. Osborne, "Law in Action in Classical Athens," in *Athens and Athenian Democracy* (Cambridge 2010 [1985]) 171–177, 201; J. P. Sickinger, "Rhetoric and the Law," in I. Worthington (ed.), *A Companion to Greek Rhetoric* (Malden 2007) 289. The argument in the remainder of this paragraph owes much to Osborne's seminal discussion.

³⁴ Osborne, in *Athens and Athenian Democracy* 175–177; Todd, *Shape of Athenian Law* 66, 160; Sickinger, in *Companion* 289.

³⁵ Osborne, in *Athens and Athenian Democracy* 176; cf. Todd, *Shape of Athenian Law* 66, 160. Hansen makes the same point about the prosecution of corrupt officials (*Eisangelia. The Sovereignty of the People's Court in Athens* [Odense 1975] 11).

accuser who believes (οἶται) that the accused should pay 20 minae is therefore not incompatible with his subsequent argument, which seems to presuppose an *agōn atimētos*. What he describes, I suggest, is an accuser who, from among a range of available legal actions, has chosen to bring one that carries the statutory penalty of 20 minae.

The second issue that needs to be addressed before we can conclude that Aristotle's second argument supports the justice interpretation concerns the construal of the conditional clause (εἴπερ ἀπλῶς τὸ ἔγκλημα γέγραπται) in 1268b19. For this clause could perhaps be read in a way that makes Aristotle's argument compatible with the legalist interpretation. More specifically, some have proposed that we read the conditional clause as implying a partial concession on Aristotle's part: Aristotle in fact agrees with Hippodamus about the risk of perjury in the current system, but he points out that the problem lies in the form of the question being asked, not in how the dikasts are allowed to answer. Legal indictments containing multiple counts might indeed force the dikast to violate his oath to vote in accordance with the laws, but if the complaint (ἔγκλημα) is written in a simple way (ἀπλῶς), i.e. containing only a single count, this risk of perjury can be eliminated without the need to reform the voting procedure itself.³⁶ In the case of Socrates, for instance, the accusers should have brought two separate charges, one for introducing new gods and one for corrupting the young, instead of one complex charge. Had they done so, no oath-bound dikast could have been forced to vote in a way that violates his oath to vote in accordance with the laws.

This line of interpretation could perhaps draw some support from the puzzling addition of δικαίως in b19. One way of construing the grammatical role of δικαίως would be to take the adverb as a qualification of the two participles in the main clause (ἀποδικάσαντα and καταδικάσαντα, b18). On this reading, the addition of δικαίως is meant to make the rather obvious point

³⁶ Newman, *Politics* 306. Cf. Mirhady, in *Horkos* 3.

that a dikast in the current system only avoids perjury provided that he in fact votes in accordance with what he believes (taking *δικαίως* in the sense of “sincerely” or “truly”).³⁷ If the dikast believes that his oath requires him to vote for condemnation but he is bribed or otherwise tempted into voting against that belief, he will of course be unable to avoid perjury, regardless of how the legal system is set up. But there is also an alternative way of taking this *δικαίως*, which might initially seem to offer some support for the legalist interpretation. This alternative construal understands the adverb as qualifying the conditional clause (*εἴτερ ἄπλῶς τὸ ἔγκλημα γέγραπται*, b19). On this construal, which draws support from the position of *δικαίως* at the end of the sentence and has been adopted in the translation above, the adverb is meant to signal, as a kind of afterthought, Aristotle’s approval of the condition he has just laid down: the dikast in the current system can avoid perjury, “if indeed the plaint has been written in a simple way (*ἄπλῶς*), as is proper (*δικαίως*).”³⁸ This explicit recommendation on Aristotle’s part could then be read as an indication that he is here departing from current practice and proposing his own solution to the problem of perjury noted by Hippodamus.

But I think there are good reasons why we should not adopt this reconstruction of the argument in b17–22. Note first that the second construal of the role of *δικαίως* above (as qualifying the conditional clause) does not necessarily imply a concession on Aristotle’s part. The adverb can simply be read as indicating his endorsement of current practice: legal charges are as a matter of

³⁷ This construal is found in the translations by Rackham (“Again, nobody compels the juror to commit perjury who, if the indictment has been drawn in simple form, gives a simple verdict of acquittal or condemnation, and gives it justly,” *Aristotle. Politics* (Cambridge [Mass.] 1944), and by Saunders (“Again, since the indictment is written in simple terms, nothing forces a person who returns in a just manner a simple verdict of condemnation or acquittal to commit perjury,” *Politics*).

³⁸ Newman (*Politics* 306) helpfully points to *Eth.Eud.* 1229b34 for an example of the use of *δικαίως* in the sense of “properly.” Schütrumpf (*Politik* 274) refers to similar uses of similar adverbs in Aristotle.

fact written in a simple way—and that is as it should be. But not only is a non-concessive reading thus compatible with the most plausible construal of the grammatical role of δικαίως; it is also the reading that fits best with the rest of Aristotle’s discussion. As I indicated above, the concessive reading depends on understanding the crucial term ἀπλῶς in b20 as meaning “simply” in the sense of “in a non-complex/non-composite way”: an ἔγκλημα written ἀπλῶς would prevent dikastic perjury because it would ensure that the dikast is never presented with a legal charge containing multiple counts. The problem is that this understanding of ἀπλῶς cannot be maintained when the passage is read in its larger context. Aristotle’s demand that the legal charge be written ἀπλῶς clearly echoes his opening paraphrase of Hippodamus’ proposal as “prescribing that the judgment is reached by making distinctions, though the charge is written in simple terms (τῆς δίκης ἀπλῶς γεγραμμένης, b5-6).³⁹ Although Aristotle here uses the general term δίκη for the written legal charge, as opposed to the technical term ἔγκλημα (“plaint”), it seems clear that he means to refer to the same state of affairs in the two passages. But if so, then the later passage in b19 cannot be read as Aristotle’s recommendation of a minor change in the current legal system that would render it immune to Hippodamus’ criticism. For what Hippodamus claimed, it seems, was precisely that a system in which the legal charge is written ἀπλῶς is a system that runs the risk forcing the dikasts into perjury. The key term ἀπλῶς, when used to describe how the legal charge is written, can therefore hardly take the meaning of “in a non-composite/non-complex way,” as the legalist construal of b19 would have it. Rather, it must be understood as “simply” in the sense of “in an *unqualified* way” or “*tout court*.” A legal charge is written ἀπλῶς insofar as it makes an unqualified demand: the accused is guilty of X so as to be liable to punishment Y. Faced with such a demand, the dikast under Hippodamus’ scheme can either himself return an unqualified verdict (guilty/not-guilty *tout court*; cf. ἀπλῶς a3–4) or he can settle for a qualified, intermediate

³⁹ I follow Ross (OCT) and Newman (*Politics* 304) in reading here δίκης, rather than κρίσεως.

verdict. If this is how we must read ἀπλῶς in b19, as I think it is, then it becomes difficult to see how Aristotle's argument can be made compatible with the legalist interpretation.

4. Conclusion

A close reading of Aristotle's discussion of Hippodamus' proposal for a reformed legal procedure in *Politics* 2.8 yields evidence in favour of the view that the justice clause of the Athenian dikastic oath was not understood to be restricted in its application (i.e. it was not merely "a default clause to be used only in exceptional cases"). On the most plausible reconstruction of Aristotle's argument, the judicial requirement that the dikasts are claimed by Hippodamus to violate under the existing system is a general requirement to vote in accordance with justice or with their "most just consideration." The fact that Aristotle does not feel the need to make this explicit in the text suggests that he assumes that this is what the dikastic oath was normally taken to require.

I do not want to exaggerate the importance of this piece of evidence for the debate about the Athenian dikastic oath. First of all, it is obviously a piece of *indirect* evidence. As the preceding sections show, Aristotle's discussion requires quite a lot of interpretative unpacking before we can conclude that it supports the unrestrictive reading of the justice clause. The strength of my conclusion in this paper ultimately depends on the plausibility of my reconstruction of an argument that is, admittedly, somewhat compressed and elliptical. Secondly, it is important to note what my conclusion does *not* show, even if it is accepted. All that I can conclude from my reading of *Politics* 2.8 is that the justice clause in the dikastic oath seems to have been understood as a general, unrestricted requirement. My argument, in other words, can only establish *that* the dikast were expected to vote in accordance with justice in all their decisions. It tells us very little about *how* that general requirement was understood and interpreted by the Athenians (as opposed to how it was interpreted by Hippodamus). As I mentioned at the beginning, most scholars who adopt the unrestrictive reading of the justice clause understand that clause as a principle of 'equity' that allowed the dikast to

overrule strict legal justice if the circumstances seemed to require it. But there are other scholars who, while also accepting the general application of the justice clause, have suggested that law and justice were in fact assumed by the Athenian courts to be entirely consonant, and that appeal to the latter was usually made in order to complement legal considerations, not to overrule them.⁴⁰ Aristotle's discussion of Hippodamus cannot help us decide between these two interpretations of how the Athenians viewed the oath's general requirement of justice. For that, there is no getting around turning to all those other texts, law court speeches principal among them, which give us a glimpse of how the oath was appealed to and used in actual legal practice.⁴¹

August, 2018

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⁴⁰ E.g. Johnstone, *Disputes and Democracy* 40–42.

⁴¹ I am grateful for the opportunities I had to discuss aspects of Aristotle's text and its ideas with Gorm Tortzen and Vincent Gabrielsen at the SAXO-institute in Copenhagen. The paper also benefited greatly from written comments on earlier drafts by Leo Catana and Adriaan Lanni, and from email correspondence with Lene Rubinstein on questions relating to Greek law.